

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

LARRY D. CHRISTMAS, JR.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:15CV00412-LG-RHW

CITY OF GULFPORT FIRE DEPARTMENT

DEFENDANT

**MOTION TO QUASH AND DISMISS PURSUANT
TO FED. R. CIV. P. 4 AND 12**

COMES NOW the City of Gulfport, Mississippi (“City of Gulfport”), by and through undersigned counsel and, by way of special appearance only and without waiving any objection, response, or defense it may have to the Complaint, be they affirmative or otherwise, files this its Motion to Quash and Dismiss Pursuant to FED. R. CIV. P. 4 and 12, and as grounds would show as follows, to-wit:¹

I.

Plaintiff, Larry D. Christmas, Jr. (“Plaintiff”) filed a Complaint in this case on December 15, 2015. A true and correct copy of this pleading is attached hereto as Exhibit “A.”

II.

On March 10, 2016, Plaintiff purportedly had the Clerk of this Court issue a Summons to “City of Gulfport Fire Department c/o Margaret Murdock, Esquire, Assistant City Attorney.”

¹Due to the straightforwardness of this Motion, the legal argument in support of it has been incorporated herein.

III.

As set out in the Affidavit of Margaret Murdock attached as Exhibit “B,” copies of the Complaint and this Summons were hand-delivered to her on March 11, 2016. No other attempt to serve process upon the “City of Gulfport Fire Department,” which is identified in the Complaint as the Defendant, has been made in this cause.

IV.

There is no legally cognizable entity known as the “City of Gulfport Fire Department.” Nonetheless, and as Ms. Murdock attests, she is not the authorized or duly appointed agent or representative to accept service of process on behalf of the “City of Gulfport Fire Department.” See Exhibit “B,” p. 2. As such, Plaintiff’s attempt to serve her with process on behalf of this “Defendant” should be quashed in accordance with FED. R. CIV. P. 4 and the Complaint dismissed as to the Defendant pursuant to FED. R. CIV. P. 12(b)(4) and (5).

V.

In view of Plaintiff’s insufficient service of process attempt, this Court would further lack personal jurisdiction over the “City of Gulfport Fire Department” (if this were a legally cognizable entity), and this case should alternatively be dismissed pursuant to FED. R. CIV. P. 12(b)(2).

WHEREFORE, the City of Gulfport, Mississippi, which is making a special appearance herein and which reserves all objections, responses, and defenses, affirmative or otherwise, which it may have to the Complaint, respectfully requests that this Honorable Court fully grant its Motion to Quash and Dismiss Pursuant to FED. R. CIV. P. 4 and 12 and enter an Order quashing the attempt to serve process upon Margaret Murdock, Esq. on March 11, 2016, fully dismissing the Complaint, and awarding it all costs associated with prosecuting this Motion, including, but not limited to, attorneys' fees and expenses, and such other relief, equitable or

otherwise, as this Court finds appropriate.

RESPECTFULLY SUBMITTED, this the 31st day of March, 2016.

CITY OF GULFPORT, MISSISSIPPI,
SPECIALLY APPEARING

By: s/ Jeffrey S. Bruni, Esq.
JEFFREY S. BRUNI, ESQ.
Attorney for Movant
MS Bar License No. 9573

CERTIFICATE OF SERVICE

I, Jeffrey S. Bruni, Attorney for the Movant, do hereby certify that on this date I electronically had filed the above and foregoing Motion to Quash and Dismiss Pursuant to FED. R. Civ. P. 4 and 12 with Exhibits with the Clerk of the Court using the ECF system, which should send notification of such filing to the Plaintiff, Larry D. Christmas, Jr., 2718 Bartlett Avenue, Apartment C4, Pascagoula, Mississippi 39567, and that I have this day had sent via First Class United States Mail, postage prepaid, a true and correct copy of the above and foregoing Motion with Exhibits to the Plaintiff, Larry D. Christmas, Jr., 2718 Bartlett Avenue, Apartment C4, Pascagoula, Mississippi 39567.

This the 31st day of March, 2016.

s/ Jeffrey S. Bruni, Esq.
JEFFREY S. BRUNI

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